

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LETICIA HERNANDEZ

Claimant

VS.

CREEKSTONE FARMS PREMIUM BEEF

Respondent

AND

COMMERCE AND INDUSTRY INS. CO.

Insurance Carrier

Docket No. 1,025,228

ORDER

Claimant requested review of the November 27, 2006 Award by Administrative Law Judge (ALJ) John D. Clark. The Appeals Board (Board) placed this matter on its summary docket as of February 2, 2007, for determination without oral argument.

APPEARANCES

Chris A. Clements, of Wichita, Kansas, represents the claimant. David F. Menghini, of Kansas City, Kansas, represents the respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The ALJ adopted the opinions of the court appointed physician, Dr. Terrance Pratt, and found that the claimant had a 9 percent impairment of the right arm.¹

The claimant requests review of the nature and extent of her disability arguing that the ALJ should have split the opinions of Dr. Pratt and Dr. Murati and found that she has a 19.5 percent impairment of function to her right arm.²

¹ Although not listed in the Award, Dr. Pratt's written report is considered part of the record pursuant to K.S.A. 44-510e(a).

² Claimant's brief at 1 (filed Dec. 29, 2006).

Respondent argues that the ALJ's Award should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs, the Board finds that the ALJ's Award should be affirmed.

The ALJ set forth the facts and circumstances surrounding claimant's injury and her subsequent treatment in some detail and the Board adopts that statement as its own.

There is no dispute as to the compensability of claimant's claim. Rather, the sole dispute surrounds the nature and extent of her impairment. Dr. Lucas testified as to his diagnoses and treatment for claimant's right hand and arm complaints beginning March 2005.³ He first diagnosed tenosynovitis of her thumb and treated that complaint with steroid injections. Her complaints continued and in May 2005 Dr. Lucas diagnosed tenosynovitis of the right middle finger which he also treated with injections.

Claimant's complaints of pain and stiffness continued and following a series of tests, a period of time off work followed by an examination in the office, Dr. Lucas testified that he was unable to identify a unifying diagnosis for claimant and he discharged her from active treatment.⁴ He did not assign a permanent impairment rating to claimant.

Thereafter, claimant was evaluated by Dr. Pedro Murati, who, following a review of the medical records and an examination, diagnosed right carpal tunnel syndrome, right deQuervain's syndrome and right 3rd digit tenosynovitis. Dr. Murati offered no work restrictions, but instead told claimant to work as tolerated and to use common sense. He did, however, opine that claimant had a 30 percent right upper extremity impairment as a result of the aforementioned diagnoses.

Following the prehearing settlement conference, the ALJ appointed Dr. Terrence Pratt to conduct an independent medical examination pursuant to K.S.A. 44-510e(a). Dr. Pratt examined the claimant on March 2, 2006 and diagnosed claimant with distal right upper extremity discomfort with an apparent history of overuse syndrome and tenosynovitis of the right middle finger and thumb. He went on to rate claimant's impairment at 9 percent.

The ALJ acknowledged the disparity in the opinions offered by Drs. Lucas and Murati and elected to adopt the impairment assessment offered by Dr. Pratt, the court-ordered independent examiner. The claimant takes issue with the ALJ's language that there was a "discrepancy in the opinions of the two physicians. . . ." when in fact, there was only one

³ All of claimant's complaints relate to her right upper extremity and all of the referenced ratings relate to the upper extremity at the level of the arm.

⁴ Lucas Depo, Ex. 2.

other impairment rating other than the one offered by Dr. Pratt. But when the record is taken as a whole, it is clear that the ALJ was referencing not the ultimate impairment ratings but rather, the disparity in the *diagnoses*. Unlike Dr. Murati, both Dr. Lucas and Dr. Pratt diagnosed tenosynovitis and neither Drs. Lucas or Pratt diagnosed carpal tunnel or DeQuervain's syndrome. Dr. Lucas, the treating physician, testified that he believed Dr. Pratt's impairment assessment was more appropriate than that suggested by Dr. Murati, which he suggested was "extreme".⁵

The Board has considered the parties' arguments and the record as a whole and finds no reason to disturb the ALJ's Award. Accordingly, the 9 percent impairment rating assessed in the Award is affirmed as is the balance of the Award.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated November 27, 2006, is affirmed in all respects.

IT IS SO ORDERED.

Dated this _____ day of March, 2007.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris A. Clements, Attorney for Claimant
David F. Menghini, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge

⁵ *Id.* at 17; Ex. 3.